

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alfredo Gonzalez	Team: Squad #7	CCRB Case #: 201506509	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/22/2015 6:53 PM	Location of Incident: § 87(2)(b)	Precinct: 43	18 Mo. SOL 1/22/2017	EO SOL 1/22/2017	
Date/Time CV Reported Wed, 07/22/2015 8:10 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/05/2015 3:55 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Jennifer Nicalek	23751	945735	043 PCT
2. POM Sean Higgins	01585	932790	043 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Edwin Espinal	09609	934831	043 PCT
2. POM Donald Hook	24812	920400	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Sean Higgins	Force: PO Sean Higgins used physical force against § 87(2)(b)	
B.POF Jennifer Nicalek	Force: PO Jennifer Nicalek used physical force against § 87(2)(b)	

Case Summary

On July 22, 2015, at approximately 6:53 p.m., in front of § 87(2)(b) in the Bronx, § 87(2)(b) was disposing of her garbage when she was allegedly approached by PO Sean Higgins and PO Jennifer Nicalek. PO Higgins and PO Nicalek immediately commanded § 87(2)(b) to leave the area, and subsequently, began pushing her multiple times towards the front of the building (**Allegation A and B**). When they reached the front of the building, PO Nicalek placed § 87(2)(b) in handcuffs, which prompted § 87(2)(b) to accidentally urinate on herself. While being placed inside PO Donald Hook's RMP, § 87(2)(b) was allegedly commanded to move further into the vehicle by PO Nicalek, but she was unable to do so because of the handcuffs. Subsequently, PO Higgins allegedly grabbed § 87(2)(b) by her arms and dragged her deeper inside the vehicle (**within Allegation A**). PO Hook then transported § 87(2)(b) to the 43rd Precinct stationhouse, where she was later issued a summons for public urination and two summonses for disorderly conduct by PO Nicalek. After being released, § 87(2)(b) called 911 and requested an ambulance because of her injuries. § 87(2)(b) was transported to § 87(2)(b) in the Bronx. She alleged that she sustained a fractured right elbow and a fractured left wrist.

Mediation, Civil and Criminal Histories

This case was ineligible for mediation due to a lawsuit filed by § 87(2)(b). A notice of claim inquiry was submitted on August 17, 2015, and the results will be added to the case file upon its receipt. § 87(2)(b)'s criminal history could not be verified because her NYSID could not be recovered from the NYPD's Booking and Arraignment Disposition System database.

Civilian and Officer CCRB Histories

- § 87(2)(b)
- § 87(2)(b), § 87(2)(g)
- PO Higgins has been a member of the NYPD for 12 years. PO Higgins has been the subject of ten previous allegations stemming from seven cases. None of the allegations were substantiated.
- PO Nicalek has been a member of the NYPD for seven years. PO Nicalek has been the subject of six allegations stemming from three cases. None of the allegations were substantiated.
- § 87(2)(g)

Potential Issues

- The field team conducted field work at the location to find contact information for the Superintendent, who was a witness to a portion of this incident, but was unable to gain access to the building (Board Review 02).

Findings and Recommendations

Allegations not pleaded

- **Abuse of Authority:** A stop allegation is not being pleaded because § 87(2)(b) was detained and transported to the 43rd Precinct stationhouse.

Allegation A – Force: PO Sean Higgins used physical force against § 87(2)(b)

Allegation B – Force: PO Jennifer Nicalek used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Higgins and PO Nicalek began pushing her immediately after they commanded her to leave the area, and that they pushed her numerous times. § 87(2)(b) could not recall how many times she was pushed or where PO Higgins and PO Nicalek made contact with her body when pushing her. While placing § 87(2)(b) into the RMP, PO Nicalek commanded her to move further into the vehicle, but she was unable to do so because of the handcuffs.

Immediately after, PO Higgins went to the other side of the vehicle and allegedly grabbed § 87(2)(b) by her arms and pulled her deeper inside the vehicle. § 87(2)(b) alleged that PO Higgins' action inside the vehicle caused her to sustain a fracture on her right elbow and on her left wrist. § 87(2)(b) was unable to describe where on her arms she was grabbed by PO Higgins. § 87(2)(b) denied that she had consumed any alcohol prior to her interaction with PO Higgins and PO Nicalek, and she stated that she did not resist while being detained (Board Review 03-05).

PO Higgins stated that he and PO Nicalek responded to the location in regards to a burglary in progress filed by the Superintendent of the building. PO Higgins and PO Nicalek were speaking with the Superintendent when § 87(2)(b) appeared, apparently looking to throw away her garbage. PO Higgins commanded § 87(2)(b) to leave due to their ongoing investigation, but she immediately began to yell and curse at them, and stated that she was allowed to be there. § 87(2)(b) then shoved him in an attempt to get past him. PO Higgins, with the help of PO Edwin Espinal (an anti-crime officer that had also responded to the location), then escorted § 87(2)(b) out to the front of the building by walking behind her, and without placing their hands on her. PO Higgins and PO Nicalek went to the front of the building where they encountered § 87(2)(b) again and commanded her to go inside, but she did not comply. Because the windows were at ground level, PO Higgins got on his hands and knees to investigate. Without provocation, § 87(2)(b) approached PO Higgins and pushed him, nearly causing him to fall over. Afterward, PO Nicalek handcuffed § 87(2)(b). § 87(2)(b) resisted being handcuffed by pulling her hands away, but he and PO Nicalek were able to overcome her resistance by simply forcing her arms together. PO Higgins acknowledged placing § 87(2)(b) inside PO Hook's vehicle, but he stated that it occurred without incident and he denied that he, or any other officer, pulled her deeper into the vehicle. PO Higgins also denied that he, or any other officer, pushed § 87(2)(b) during their interaction with her. PO Higgins recalled that § 87(2)(b) complained about her handcuffs being too tight, but of no other pain (Board Review 06).

§ 87(2)(g)

§ 87(2)(b) PO Nicalek failed to mention that § 87(2)(b) pushed PO Higgins while at the front of the building, though she corroborated § 87(2)(b)'s combative behavior and the fact that she had pushed PO Higgins while at the back of the building. PO Nicalek also emphasized that § 87(2)(b)'s behavior was creating a hazardous condition because they were at the location investigating a burglary in progress, and her behavior was taking the officers' attention away from a potentially dangerous situation. PO Nicalek denied that she, or any other officer, pushed § 87(2)(b) or pulled her arms while inside the RMP (Board Review 07).

PO Hook went to the location because PO Higgins and PO Nicalek had requested an RMP with a cage. § 87(2)(b) had already been placed in handcuffs and seemed intoxicated. He cited § 87(2)(b)'s appearance, her incoherent speech, and the fact that she had urinated herself as signs. PO Hook also recalled that § 87(2)(b) could not follow simple directions, which made it difficult for her to fully enter the RMP. Eventually, § 87(2)(b) was able to place her feet inside. PO Hook denied that he, or any other officer, grabbed § 87(2)(b)'s arms and pulled her deeper into the vehicle. PO Hook did not recall § 87(2)(b) complaining of any pain or injuries during their interaction (Board Review 08).

§ 87(2)(b)'s medical records indicate that her right wrist had prior trauma; however, the x-ray did not show any irregularity in her right elbow or any sign of recent trauma. The x-rays of her left arm were inconclusive, and an acute fracture could not be ruled out nor confirmed. The medical records also indicate that § 87(2)(b) made comments to hospital staff admitting to having consumed "beers" at home (Board Review: privileged documents).

PO Higgins' and PO Nicalek's memo books confirmed that they responded to the location in regards to a burglary. Additionally, the two summonses issued for disorderly conduct state that § 87(2)(b) failed to disperse after being commanded to do so and that she behaved violently and pushed officers at the location (Board Review 09-11).

Officers may use the minimum amount of force necessary to take into custody a violent or resisting individual. NYPD Patrol Guide, Section 203-11 (Board Review 12).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Squad: _____

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date